



OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2001-1010

To: Deborah Perluss
Northwest Justice Project
401 Second Avenue South
Seattle, WA 98104

Date: May 7, 2001

Subject: Eligibility of Marshall Islanders for Legal Services

You requested an opinion from this office regarding the eligibility of citizens of the Republic of the Marshall Islands (RMI) for legal services outside of the Marshall Islands. Citizens of RMI are only eligible for legal services in the United States if they meet the alien eligibility requirements of 45 CFR Part 1626.

Analysis

Citizens of the Marshall Islands are eligible for legal services assistance within the RMI pursuant to the Compact of Free Association between the United States and the RMI and the Federated States of Micronesia ("FSM"), which was adopted into law by the Compact of Free Association Act of 1985 ("CFA Act") (P.L. 99-239, codified at 48 U.S.C. §§1901, et seq.). Specifically, Section 224 of the Compact provides that:

The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia may agree from time to time to the extension of additional United States grant assistance, services and programs as provided by the laws of the United States, to the Marshall Islands or the Federated States of Micronesia, respectively.

Section 105(h)(1)(A) of the CFA Act (codified at 48 U.S.C. §1905(h)(1)(A)) provides that

. . . pursuant to section 224 of the Compact, the programs and services of the following agencies shall be made available to the Federated States of Micronesia and to the Marshall Islands . . . (A) the Legal Services Corporation¹

¹ Unlike certain other provisions in the Compact and the CFA Act which provide a sunset date for their applicability, Section 224, and the implementing legislation of the CFA Act, continue in

However, the eligibility of Marshall Islanders for legal services on the Marshall Islands, does not confer automatic eligibility on them for services elsewhere.

In 1983, Congress placed the first statutory restrictions on representation of aliens on LSC recipients in LSC's appropriations bill for that year, P.L. 97-377. That law provided that none of the funds appropriated could be expended to provide legal assistance for or on behalf of any alien unless the alien was a resident of the U.S. and otherwise met certain statutorily specified criteria. On its face, this language would have appeared to imply that all non-U.S. citizens, including residents of the Marshall Island (who were otherwise eligible for services under the LSC Act as part of the Trust Territory of the Pacific Island) would be subject to these restrictions, notwithstanding their eligibility under the LSC Act.

To deal with this problem, LSC included a "special eligibility section" (§1626.10) in the implementing regulations on representation of aliens, 45 CFR Part 1626, to exempt residents of the Trust Territory from the alien restrictions. Although the Trust Territory was terminated in 1986, the former trust territories remained in the special eligibility section of Part 1626 and a 1989 to the regulation contained an amendment to §1626.10 intended to make the section more precise in light of the termination of the Trust Territory, and to restate the Congressional intent that residents of these entities be eligible for assistance from LSC funded legal services programs. 54 Fed. Reg. 18110 (April 27, 1989).

As a result of new statutory restrictions contained in the LSC FY 1996 appropriations legislation (P.L. 104-134), additional changes to Part 1626 were made in 1996. Although the statutory amendments did not address this issue, §1626.10 was again revised. The revised (and current) version reads:

This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

This change was made in response to comments from the LSC Office of the Inspector General (OIG). As explained in the preamble to the final rule:

The OIG suggested that both the prior rule and the interim rule dealt with the question of special eligibility incorrectly and urged that the final rule refer only to the legal services programs serving people who were citizens of those jurisdictions. The effect of this

force. Although not material to this Opinion, we note that the applicability of these other provisions was recently extended. See P.L. 106-504 (November 13, 2000).

change would be to make financially eligible citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau only eligible for legal services from the recipients serving those areas. . . . *They would not be eligible for services from any other recipients unless they also came within one of the categories of eligible aliens listed in §1626.5. . . .* The Board agreed with the OIG analysis and revised §1626.10 accordingly. 62 FR 19413 (April 21, 1997) (emphasis added).

Thus, residents of the RMI, the PSM, and the Republic of Palau seeking assistance from legal services providers in the United States may only be receive such assistance if they meet the alien eligibility requirements of §1625.5.²

Very truly yours,

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² Residents of the Commonwealth of the Northern Mariana Islands are citizens of the United States and are, therefore, eligible for legal assistance from any legal services program.